

Effective 5/10/2016

Part 20
Asbestos Bankruptcy Trust Claims Transparency Act

78B-6-2001 Title.

This part is referred to as the "Asbestos Bankruptcy Trust Claims Transparency Act."

Enacted by Chapter 385, 2016 General Session

78B-6-2002 Legislative findings -- Purpose.

(1) The Legislature finds that:

- (a) approximately 100 employers have declared bankruptcy at least partially due to asbestos-related liability;
- (b) these bankruptcies have resulted in a search for more solvent companies by claimants, resulting in over 10,000 companies being named as asbestos defendants, including many small- and medium-sized companies, in industries that cover 85% of the United States economy;
- (c) scores of trusts have been established in asbestos-related bankruptcy proceedings to form a multi-billion dollar asbestos bankruptcy trust compensation system outside of the tort system, and new asbestos trusts continue to be formed;
- (d) asbestos claimants often seek compensation from solvent defendants in civil actions and trusts or claims facilities formed in asbestos-related bankruptcy proceedings;
- (e) there is limited coordination and transparency between these two paths to recovery, which has resulted in the suppression of evidence in asbestos actions and potential fraud; and
- (f) justice is promoted by transparency with respect to asbestos bankruptcy trust claims in civil asbestos actions.

(2) This part is enacted to:

- (a) provide transparency with respect to asbestos bankruptcy trust claims in civil asbestos actions; and
- (b) reduce the opportunity for fraud or suppression of evidence in asbestos actions.

Enacted by Chapter 385, 2016 General Session

78B-6-2003 Definitions.

As used in this part:

- (1) "Asbestos" means chrysotile, amosite, crocidolite, tremolite asbestos, anthophyllite asbestos, actinolite asbestos, asbestiform winchite, asbestiform richterite, asbestiform amphibole minerals, and any of these minerals that have been chemically treated or altered, including all minerals defined as asbestos in 29 C.F.R. Sec. 1910 at the time the asbestos action is filed.
- (2)
 - (a) "Asbestos action" means a claim for damages or other civil or equitable relief presented in a civil action resulting from, based on, or related to:
 - (i) the health effects of exposure to asbestos, including:
 - (A) loss of consortium;
 - (B) wrongful death;
 - (C) mental or emotional injury;
 - (D) risk or fear of disease or other injury; and

- (E) costs of medical monitoring or surveillance; and
- (ii) any other derivative claim made by or on behalf of a person exposed to asbestos or a representative, spouse, parent, child, or other relative of that person.
- (b) "Asbestos action" does not include a claim for workers' compensation or veterans' benefits.
- (3) "Asbestos trust" means a:
 - (a) government-approved or court-approved trust that is intended to provide compensation to claimants arising out of, based on, or related to the health effects of exposure to asbestos or asbestos-containing products;
 - (b) qualified settlement fund that is intended to provide compensation to claimants arising out of, based on, or related to the health effects of exposure to asbestos or asbestos-containing products;
 - (c) compensation fund or claims facility created as a result of an administrative or legal action that is intended to provide compensation to claimants arising out of, based on, or related to the health effects of exposure to asbestos or asbestos-containing products;
 - (d) court-approved bankruptcy that is intended to provide compensation to claimants arising out of, based on, or related to the health effects of exposure to asbestos or asbestos-containing products; or
 - (e) plan of reorganization or trust pursuant to 11 U.S.C. Sec. 524(g) or 11 U.S.C. Sec. 1121(a) or other applicable provision of law that is intended to provide compensation to claimants arising out of, based on, or related to the health effects of exposure to asbestos or asbestos-containing products.
- (4) "Plaintiff" means:
 - (a) the person bringing the asbestos action, including a personal representative if the asbestos action is brought by an estate; or
 - (b) a conservator or next friend if the asbestos action is brought on behalf of a minor or legally incapacitated individual.
- (5) "Trust claims materials" means a final executed proof of claim and all other documents and information related to a claim against an asbestos trust, including:
 - (a) claims forms and supplementary materials;
 - (b) affidavits;
 - (c) depositions and trial testimony;
 - (d) work history;
 - (e) medical and health records;
 - (f) documents reflecting the status of a claim against an asbestos trust; and
 - (g) all documents relating to the settlement of the trust claim if the trust claim has settled.
- (6) "Trust governance documents" means all documents that relate to eligibility and payment levels, including:
 - (a) claims payment matrices; and
 - (b) trust distribution procedures or plans for reorganization for an asbestos trust.
- (7) "Veterans' benefits" means a program for benefits in connection with military service administered by the Veterans Administration under United States Code, Title 38, Veterans Benefits.
- (8)
 - (a) "Workers' compensation" means a program administered by the United States or a state to provide benefits, funded by a responsible employer or the employer's insurance carrier, for occupational diseases or injuries or for disability or death caused by occupational diseases or injuries.

- (b) "Workers' compensation" includes the Longshore and Harbor Workers' Compensation Act, 33 U.S.C. Sec. 901 et seq., and Federal Employees' Compensation Act, 5 U.S.C. Sec. 8101 et seq.
- (c) "Workers' compensation" does not include the Federal Employers' Liability Act, 45 U.S.C. Sec. 51 et seq.

Enacted by Chapter 385, 2016 General Session

78B-6-2004 Required disclosures by plaintiff.

- (1) For each asbestos action filed in this state, the plaintiff shall provide all parties with a sworn statement identifying all asbestos trust claims that have been filed by the plaintiff or by anyone on the plaintiff's behalf, including claims with respect to asbestos-related conditions other than those that are the basis for the asbestos action or that potentially could be filed by the plaintiff against an asbestos trust.
 - (a) The sworn statement shall be provided no later than 120 days prior to the date set for trial for the asbestos action.
 - (b) For each asbestos trust claim or potential asbestos trust claim identified in the sworn statement, the statement shall include the name, address and contact information for the asbestos trust, the amount claimed or to be claimed by the plaintiff, the date the plaintiff filed the claim, the disposition of the claim and whether there has been a request to defer, delay, suspend, or toll the claim.
 - (c) The sworn statement shall include an attestation from the plaintiff, under penalties of perjury, that the sworn statement is complete and based on a good faith investigation of all potential claims against asbestos trusts.
- (2) The plaintiff shall make available to all parties all trust claims materials for each asbestos trust claim that has been filed by the plaintiff or by anyone on the plaintiff's behalf against an asbestos trust, including any asbestos-related disease.
- (3) The plaintiff shall supplement the information and materials provided pursuant to this section within 90 days after the plaintiff files an additional asbestos trust claim, supplements an existing asbestos trust claim or receives additional information or materials related to any claim or potential claim against an asbestos trust.
- (4) Failure by the plaintiff to make available to all parties all trust claims materials as required by this part shall constitute grounds for the court to extend the trial date in an asbestos action.

Enacted by Chapter 385, 2016 General Session

78B-6-2005 Discovery -- Use of materials.

- (1) Trust claims materials and trust governance documents are presumed to be relevant and authentic and are admissible in evidence. Claims of privilege may not apply to any trust claims materials or trust governance documents.
- (2) A defendant in an asbestos action may seek discovery from an asbestos trust. The plaintiff may not claim privilege or confidentiality to bar discovery and shall provide consent or other expression of permission that may be required by the asbestos trust to release information and materials sought by a defendant.

Enacted by Chapter 385, 2016 General Session

78B-6-2006 Scheduling trial -- Stay of action.

- (1) A court shall stay an asbestos action if the court finds that the plaintiff has failed to make the disclosures required under Section 78B-6-2004 within 120 days prior to the trial date.
- (2) If, in the disclosures required by Section 78B-6-2004, a plaintiff identifies a potential asbestos trust claim, the judge may stay the asbestos action until the plaintiff files the asbestos trust claim and provides all parties with all trust claims materials for the claim. The plaintiff shall also state whether there has been a request to defer, delay, suspend, or toll the claim against the asbestos trust.

Enacted by Chapter 385, 2016 General Session

78B-6-2007 Identification of additional or alternative asbestos trusts by defendant.

- (1) Not less than 90 days before trial, if a defendant identifies an asbestos trust claim not previously identified by the plaintiff that the defendant reasonably believes the plaintiff can file, the defendant shall meet and confer with plaintiff to discuss why defendant believes plaintiff has an additional asbestos trust claim. The defendant may move the court for an order to require the plaintiff to file the asbestos trust claim after the meeting. The defendant shall produce or describe the documentation it possesses or is aware of in support of the motion.
- (2) Within 10 days of receiving the defendant's motion under Subsection (1), the plaintiff shall, for each asbestos trust claim identified by the defendant, do one of the following:
 - (a) file the asbestos trust claim;
 - (b) file a written response with the court setting forth the reasons why there is insufficient evidence for the plaintiff to file the asbestos trust claim; or
 - (c) file a written response with the court requesting a determination that the plaintiff's expenses or attorney's fees and expenses to prepare and file the asbestos trust claim identified in the defendant's motion exceed the plaintiff's reasonably anticipated recovery from the trust.
- (3)
 - (a) If the court determines that there is a sufficient basis for the plaintiff to file the asbestos trust claim identified by the defendant, the court shall order the plaintiff to file the asbestos trust claim and shall stay the asbestos action until the plaintiff files the asbestos trust claim and provides all parties with all trust claims materials no later than 30 days before trial.
 - (b) If the court determines that the plaintiff's expenses or attorney's fees and expenses to prepare and file the asbestos trust claim identified in the defendant's motion exceed the plaintiff's reasonably anticipated recovery from the asbestos trust, the court shall stay the asbestos action until the plaintiff files with the court and provides all parties with a verified statement of the plaintiff's history of exposure, usage or other connection to asbestos covered by the asbestos trust.

Enacted by Chapter 385, 2016 General Session

78B-6-2008 Valuation of asbestos trust claims.

If a plaintiff proceeds to trial in an asbestos action before an asbestos trust claim is resolved, the filing of the asbestos trust claim may be considered as relevant and admissible evidence.

Enacted by Chapter 385, 2016 General Session

78B-6-2009 Failure to provide information -- Sanctions.

A plaintiff who fails to provide all of the information required under this part is subject to sanctions as provided in the Utah Rules of Civil Procedure and any other relief for the defendants that the court considers just and proper.

Enacted by Chapter 385, 2016 General Session

78B-6-2010 Application.

This part applies to asbestos actions filed on or after May 10, 2016.

Enacted by Chapter 385, 2016 General Session